

September 8, 2020

Texas House Committee on Insurance

*Via email to Committee Clerk Sergio Cavazos, [Sergio.Cavazos\\_HC@house.texas.gov](mailto:Sergio.Cavazos_HC@house.texas.gov)*

Dear Chairman Lucio and Members of the Committee:

The undersigned consumer and patient advocacy organizations appreciate the opportunity to submit written testimony in response to the following part of Interim Charge 1:

*Study the impact to health care systems if the Affordable Care Act is ruled unconstitutional, including identifying which mandates, consumer protections, and subsidies will be lost and which have equivalents in state law.*

The Health Care Repeal lawsuit that seeks to overturn the entire Affordable Care Act would have devastating consequences for Texans and our health care system. The lawsuit, led by Texas Attorney General Ken Paxton, would eliminate strong federal protections for people with pre-existing conditions and coverage for 20 million Americans, including [1.7 million Texans](#). Oral arguments to the U.S. Supreme Court are scheduled for November 10, 2020, with a decision expected in 2021.

The potential harm from this lawsuit would be awful under any circumstances, but would be particularly devastating as Texas families are dealing with a global pandemic and an economic meltdown that already eliminated job-based health insurance for [1.6 million Texans](#). The Affordable Care Act (ACA) provides the most affordable means of coverage for Texans who have lost their job-based health insurance. Not surprisingly, enrollment in ACA Marketplace coverage [has grown](#) as job losses mount.

A growing body of research shows that COVID-19 is [taking a disproportionate toll](#) on people of color, in part due to deep and long-standing racial and ethnic disparities in health care access and outcomes. While much more work to reduce health disparities remains, the ACA has led to [historic reductions](#) in racial and ethnic disparities in both health coverage and health care access. We should build upon policy tools that a narrowing disparities, like the ACA, not eliminate them.

[Polling](#) shows Texans want lawmakers to improve access to health care and maintain strong protections for pre-existing conditions — not take them away.

As the Committee studies ACA provisions that are at risk of being eliminated by the Health Care Repeal lawsuit and lack an equivalent in state law, please keep these facts in mind:

1. Few, if any, ACA provisions and consumer protections have an equivalent in existing Texas law that would serve as the default if the ACA is overturned. We have listed several below;
2. Leaders in Texas have put no plan together whatsoever to ensure access to health care and coverage for Texans, should Texas' lawsuit achieve its aim of eliminating the ACA; and
3. State action alone, even if sweeping and quick, simply cannot replace consumer protections that many Texans would lose. The Texas Legislature can regulate and set standards for state-regulated plans, which cover roughly just 1-in-3 Texans with private health insurance. The federal ERISA law pre-empts state regulation or standards for other coverage, [held by roughly 2-in-3 Texans](#) with private health insurance.

## What Texans Stand to Lose

### ***ACA coverage and federal funding***

- [1.1 million Texans](#) signed up for 2020 Marketplace coverage for January. [9-in-10 of them](#) get federal financial help to lower their costs. Additional Texans have [qualified for mid-year Marketplace enrollment](#) in 2020 due COVID-related job and coverage losses.
- [205,000 young adults](#) in Texas gained coverage by being able to stay on a parent's plan to age 26. Existing state law allows young adults, if unmarried, to stay on a parent's health insurance to age 25, but ERISA pre-emption prevents this state provision from applying to most Texans with private insurance.
- Former foster youth now retain their Texas Medicaid coverage until they turn 26 years old.
- Altogether, an estimated [1.7 million Texans](#) have coverage under the ACA, which is at risk from the lawsuit.
- The ACA increased federal funding for affordable coverage in Texas by about [\\$6.4 billion/year](#). Most of that, about [\\$5 billion/year](#), is the investment of federal Marketplace subsidies that connect roughly 1 million low- and moderate-income Texans to coverage.
- Additional federal funding through the ACA Community First Choice option allows more Texans with disabilities to receive home and community-based services through Medicaid.
- Texas community-based organizations received [\\$1.6 million](#) in federal Navigator grants in 2019 to provide outreach, education, and enrollment assistance for Marketplace and Medicaid coverage. Additional federal funding is available to support enrollment assistance at community health clinics.
- Texas would lose the option to accept federal Medicaid expansion funding to cover 90% of the costs for uninsured, low-wage Texans in the future. This option – so far been rejected by Texas leaders – would provide a health insurance option to [an estimated](#) 2.2 million uninsured low-wage Texas adults by January 2021. Before the pandemic increased the uninsured rate, [analysts estimated](#) that Medicaid expansion would cover 1.5 million Texans.

### ***ACA protections for people with pre-existing conditions***

Several ACA consumer protections work together prohibit discrimination based on pre-existing conditions, including

1. You can't be denied coverage;
2. You can't be charged more;
3. Policies can't exclude coverage for pre-existing conditions;
4. No lifetime or annual limits on coverage; and
5. Policies sold to individuals and small employers must have comprehensive coverage, so insurance covers the health care one needs.

**None of these ACA protections are guaranteed for individual market coverage in Texas state law.**

More than [1-in-4 Texans](#) has a pre-existing condition – like high blood pressure, high cholesterol,

diabetes or asthma – that would have resulted in a denial of individual market coverage prior to the ACA.

Pre-ACA, Texas operated a high risk pool, open to some people with pre-existing conditions who would have been rejected in the individual market. It was [not set up or funded](#) in a way to make it a meaningful coverage option for many Texans. At its peak, it covered fewer than 30,000 Texans (back when Texas' uninsured population was 6 million people), with premiums twice as high as the market rate. It also had a pre-existing condition waiting period for people without prior continuous coverage, a provision incongruous with the high risk pool's apparent purpose. Texas legislators abolished the high risk pool in 2013 because more-affordable, guaranteed-issue, ACA coverage replaced it.

### ***Additional consumer protections provided by the ACA***

- [10.3 million Texans](#), most of whom have job-based insurance, gained access to preventive services – like flu shots, mammograms and other cancer screenings, and contraception – at no out-of-pocket cost to patients.
- Coverage sold to individuals and small employers must have “Essential Health Benefits” – like mental health treatment, prescription drugs, and maternity. [Many pre-ACA individual market plans](#) failed to cover or had limited coverage of these benefits.
- New standards require streamlined eligibility, enrollment, and renewal policies for Medicaid, CHIP and Marketplace Coverage.
- Seniors in Texas have saved money on prescription drugs because the ACA closed the Medicare “donut hole.” In Texas, [333,500 seniors](#) saved money on drugs in 2016, and from 2010-2016, Texans in Medicare saved \$1.8 billion.
- Individuals in Medicare gained access to new preventive services and annual check-up with no out-of-pocket cost to patients and benefited from Medicare's strengthened financial status.
- Health insurance policies must have an annual cap on out-of-pocket costs that limits an individual's financial exposure if they get sick or injured, to protect against medical bankruptcy.
- Insurance companies can no longer place lifetime or annual caps on coverage. [7.5 million](#) Texans had insurance with a lifetime cap before the ACA.
- Insurers can no longer retroactively cancel your coverage if you get sick (rescission).
- Women can't be charged more than men for the same coverage and there are limits on premium increases as you age.
- Federal mental health and substance use parity protections were extended to types of health insurance previously exempted, newly benefiting millions of Texans.
- Health insurance plans must provide Summary of Benefits and Coverage, like a “nutrition label” for health insurance. It is a brief and standardized summary of coverage written in plain language that is available upfront for shoppers and after you enroll.

Thank you for studying this important issue. We are unlikely to have a final Supreme Court ruling on the Health Care Repeal lawsuit during the 2021 regular legislative session, but we will have opportunities to maximize the coverage, federal funding, and consumer protections available through the ACA. We stand ready to help you do that.

Sincerely,

Children's Defense Fund - Texas

Every Texan (formerly Center for Public Policy Priorities)

National Association of Social Workers – Texas Chapter

Methodist Healthcare Ministries of South Texas

Texas Parent to Parent

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